

UNITED STATES TAX COURT
WASHINGTON, DC 20217

LINDA JEAN MATUSZAK,)	
)	
Petitioner(s),)	
)	
v.)	Docket No. 471-15
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	
)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

On January 7, 2015, petitioner petitioned this Court for review of a Final Appeals Determination dated October 7, 2014 (notice of determination) that denies petitioner's request for innocent spouse relief from joint and several liability under Internal Revenue Code (I.R.C.) section 6015(b), (c), and (f) for taxable year 2007. On November 10, 2015, respondent filed a Motion to Dismiss for Lack of Jurisdiction on the ground that the petition was not timely filed. On December 3, 2015, petitioner filed (1) a Response to Motion to Dismiss for Lack of Jurisdiction and (2) a Motion for Continuance.

In respondent's Motion to Dismiss for Lack of Jurisdiction, respondent moves the Court to dismiss this case on the ground that the petition was not timely filed within the statutory period prescribed by sections 6015(e)(1)(A)(ii) or 7502 of the I.R.C. Respondent attached to the motion a copy of a certified mail list, as evidence of the fact that a notice of determination concerning relief from joint and several liability was sent to petitioner by certified mail on October 7, 2014. Petitioner's petition arrived at the Court in an UPS Next Day Air envelope bearing a notation that the petition was mailed on January 6, 2015, and it was filed with the Court on January 7, 2015. Petitioner signed and dated the petition as of "January 6, 2015".

The Tax Court is a court of limited jurisdiction and may exercise jurisdiction only to the extent expressly provided by statute. Breman v. Commissioner, 66

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T.C. 61, 66 (1976). In a case arising from a notice of determination that disallows a request for relief from joint and several liability on a joint return, the jurisdiction of the Court depends, in part, on the timely filing of a petition by the taxpayer. Sec. 6015(e); Rule 320(b), Tax Court Rules of Practice and Procedure. In this regard, section 6015(e)(1) specifically provides that the petition must be filed with the Tax Court within 90 days of the date of the notice of determination. The Court has no authority to extend this 90-day period. However, if the conditions of section 7502 are satisfied, a petition that is timely mailed may be treated as having been timely filed.

Petitioner was served with a copy of respondent's motion to dismiss on November 10, 2015, and on December 3, 2015, petitioner filed her Response to Motion to Dismiss for Lack of Jurisdiction. In her response, petitioner alleges that the notice of determination was not actually received by her on October 7, 2014, and that she did not receive it until October 14, 2014. Respondent attached to the motion to dismiss for lack of jurisdiction a copy of the USPS Product & Tracking Information which shows that the notice of determination was mailed on October 7, 2014, which date is reflected on the notice of determination. The USPS Product & Tracking Information, attached to respondent's motion, reflects that no authorized recipient was available to receive the notice of determination on Saturday, October 11, 2014, and that a notice of attempted delivery was left at petitioner's address. The USPS Product & Tracking Information further shows that the next attempted delivery date is Tuesday, October 14, 2014, which is the date that the notice of determination was delivered and received by petitioner.¹

Petitioner also alleges that "two sources—agents from the Internal Revenue Service" verbally informed her that the 90-day period for timely filing a petition with the Tax Court expired at the "end of business on January 7, 2015". However, the notice of determination states that, "[i]f you disagree with our decision, you can file a petition with the United States Tax Court to review our denial. You must file your petition within 90 days from the date of this letter. If you intend to file a petition, you should do so promptly. PLEASE NOTE: The law sets the time you are allowed to file your petition; the IRS cannot change the time period." The notice of determination also states that if the taxpayer disagrees with the notice of determination the taxpayer should "[s]end * * * [her] petition and a copy of this letter within 90 days from the date of this letter".

¹ Monday, October 13, 2014, was Columbus Day, a Federal holiday.

Moreover, even if petitioner received erroneous information concerning the 90-day period expiration date from an IRS employee as she alleges, the erroneous legal advice cannot eliminate, by estoppel or otherwise, the jurisdictional requirement for a timely filed petition. See Elgart v. Commissioner, T.C. Memo. 1996-379 (and cases cited therein).

Petitioner's additional argument is that respondent has had ample time, since January 7, 2015, and before November 10, 2015, to move for dismissal for lack of jurisdiction on the ground that the petition was not timely filed. Petitioner's argument is unavailing. This Court's jurisdiction is predicated on a timely filed petition and petitioner did not timely file her petition. In this case, the 90-day period for filing a timely petition with the Court under section 6213(a) expired on January 5, 2015. The record reflects that Ms. Matuszak's petition was mailed on January 6, 2015, which is one day after the expiration of the 90-day period for filing a petition with this Court.

While the Court is sympathetic to petitioner's situation, petitioner did not file her petition by the deadline and we are obliged to dismiss this case for lack of jurisdiction.

The premises considered, it is

ORDERED that respondent's Motion to Dismiss for Lack of Jurisdiction is granted, and this case is dismissed for lack of jurisdiction. It is further

ORDERED that petitioner's Motion for Continuance is denied as moot.

**(Signed) L. Paige Marvel
Judge**

ENTERED **DEC 29 2015**